

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

FILED11-15-16
10:40 AM

November 15, 2016

Agenda ID #15349
Petition for Rulemaking

TO PARTIES OF RECORD IN PETITION 16-07-004:

This is the proposed decision of Administrative Law Judge Anne E. Simon. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 15, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:ek4

Attachment

Decision **PROPOSED DECISION OF ALJ SIMON** (Mailed 11/15/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of Calpine Corporation to Adopt,
Amend, or Repeal a Regulation Pursuant to
Pub. Util. Code § 1708.5.

Petition 16-07-004
(Filed July 12, 2016)

**DECISION DENYING PETITION OF CALPINE CORPORATION TO ADOPT,
AMEND, OR REPEAL A REGULATION**

Summary

This decision denies the request of Calpine Corporation to open a rulemaking to revise the station power tariffs of the investor-owned utilities with respect to the netting period methodology used in those tariffs. This proceeding is closed.

1. Procedural Background

Calpine Corporation (Calpine) filed its Petition to Adopt, Amend, or Repeal a Regulation pursuant to Pub. Util. Code § 1708.5 (Petition) on July 12, 2016.¹ Responses to the Petition were filed on August 11, 2016 by

¹ Public Utilities Code § 1708.5 provides:

- (a) The commission shall permit interested persons to petition the commission to adopt, amend, or repeal a regulation.
- (b) (1) The commission shall consider a petition and, within six months from the date of receipt of the petition, either deny the petition or institute a proceeding to adopt, amend, or repeal the regulation.
- (2) The commission may extend the six month period for consideration of a petition pursuant to paragraph (1) to allow public review and comment pursuant to subdivision (g) of Section 311.

Independent Energy Producers (IEP); Pacific Gas and Electric Company (PG&E); Shell Energy North America (US), L.P. (Shell); Southern California Edison Company (SCE); and Western Power Trading Forum (WPTF). Calpine filed a Reply on August 22, 2016.

2. Discussion

In its Petition, Calpine asks the Commission to open a rulemaking to consider a change in the netting calculation methodology for the Investor Owned Utilities (IOUs) tariffs on "station power," the amount of power consumed from the grid by an electric generating facility. The current netting methodology for station power tariffs has a 15-minute netting interval; i.e., a generator's imports from the grid are netted against its power exports every 15 minutes. This methodology was reviewed by the Commission relatively recently, approving SCE's Schedule Station Power Self-Supply (SPSS) in Resolution (Res.) E-4673 in August 2014. Rehearing of Res. E-4673 as modified was denied by Decision

(c) If the commission denies a petition, the order or resolution of the commission shall include a statement of the reasons of the commission for that denial.

(d) If the commission finds that it is precluded by law from granting a petition, the statement of reasons for denial pursuant to subdivision (c) shall identify the relevant provisions of law.

(e) The commission shall implement this section under the Rules of Practice and Procedure in effect on January 1, 2000. On or before July 1, 2001, the commission shall amend the Rules of Practice and Procedure to provide more specific procedures for handling a petition pursuant to this section.

(f) Notwithstanding Section 1708, the commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708.

All further references to sections are to the Public Utilities Code unless otherwise specified.

(D.)15-04-031. Although the procedural history of the station power tariffs over the past ten years is complex, Res. E-4673 as modified restored the netting methodology to what it had been in 2006 (15-minute intervals), prior to a complex series of changes in response to an order of the Federal Energy Regulatory Commission (FERC).²

Calpine, supported by IEP, Shell, and WPTF, asks the Commission to revisit the station power netting methodology not because of any changes related to the station power tariffs, but because the Commission has implemented a successor tariff to the net energy metering (NEM) tariff for customer-generators using on-site renewable distributed generation systems. (D.16-01-044.) The history of the NEM tariff and the legislation directing the Commission to develop a successor to it is set out in detail in D.16-01-044 (at 12-17).³

Calpine proposes that the netting methodology under the NEM successor tariff should be extended to the station power tariffs, on the grounds that all generators should be treated in a similar manner.⁴ PG&E responds that station power netting and NEM customer netting are "dissimilar." PG&E points out, among other things, that the NEM program was established by the Legislature to support renewable generation, and that the wind and solar generation supported is intermittent in nature. (PG&E Response at 2.) SCE adds that only customers

² See discussions in Res. E-4673 at 2-3; Decision (D.) 15-04-031 at 2-3.

³ Net energy metering is authorized, and eligible customer-generators are defined, in Section 2827. Section 2827.1, requiring the Commission to develop a successor to the NEM tariff, was added by Assembly Bill 327 (Perea), Stats. 2013, ch. 611.

⁴ Calpine's characterization of the NEM successor tariff netting period as "12 months" (Petition at 2-3) is somewhat misleading. The NEM successor tariff netting period is one billing cycle, typically one month for residential customers. Because customer-generators can carry bill credits forward to the next billing cycle, a "true-up" is necessary at some point. That true-up is annual. See D.16-01-044 at 12-13.

with onsite renewable generation systems that are sized to meet the customer's load are eligible for NEM tariffs. (SCE Response at 5-6.)⁵

Calpine's argument is based largely on the assertion that "NEM generators" and "non-NEM generators" are essentially the same for purposes of the rulemaking Calpine seeks. As suggested by the responses of PG&E and SCE, however, this asserted equivalence does not stand up to scrutiny. The differences between customer-generators who are eligible for the NEM successor tariff and merchant generation facilities paying for station power are both many and significant. Those most relevant to this decision include:

1. Customer-generators eligible for the NEM successor tariff must use "a renewable electrical generation facility."⁶ Calpine's Petition is concerned with the application of station power tariffs to generation facilities that use natural gas as fuel.
2. Customer-generators eligible for the NEM successor tariff may be residential customers, small commercial customers, or commercial, industrial, or agricultural customers of a utility. More than 95% of customers' systems using the NEM tariff as of September 2015 were those of residential customers.⁷ Calpine's Petition seeks changes to benefit merchant generation facilities, many with capacities of 600 megawatts (MW) or more.
3. The renewable electrical generation systems of customer-generators eligible for the NEM successor tariff must be

⁵ SCE also notes several issues that it asserts would make Calpine's proposal difficult to implement. (SCE Response at 8-11.) The merits of any possible changes to the station power netting rules are not now before the Commission; the only question is whether to open a rulemaking to consider such changes.

⁶ Section 2827(b)(4). All definitional elements quoted in this list are found in Section 2827(b)(4).

⁷ D.16-01-044, Table 2 at 17.

sited on the customer's premises and "intended primarily to offset part or all of the customer's own electrical requirements." The merchant generation facilities addressed by Calpine's Petition are businesses that are designed and built to sell their electrical output into the wholesale market.

4. The Legislature has explicitly identified the use of NEM for eligible customer-generators as providing a wide range of benefits for the state.⁸ Calpine has identified no policy of comparable authority to support its proposal to change the station power tariffs.

The comprehensive NEM program initiated by the Legislature and implemented by the Commission furthers a number of explicit state policy goals, including increasing renewable sources of generation, encouraging conservation and efficiency, and reducing peak demand. The netting rules for customer-generators eligible for the NEM successor tariff are embedded in the overall policy framework of the NEM program and are intended to further those goals.

In contrast, the netting rules in the IOUs' station power tariffs are billing arrangements that are part of providing electric service to large merchant generators. These tariffs are part of the business of electricity generation, recovering costs for the utility and constituting an ordinary cost of doing business for the generation facility.

⁸ Section 2827(a) provides:

The Legislature finds and declares that a program to provide net energy metering combined with net surplus compensation, co-energy metering, and wind energy co-metering for eligible customer-generators is one way to encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy supply infrastructure, enhance the continued diversification of California's energy resource mix, reduce interconnection and administrative costs for electricity suppliers, and encourage conservation and efficiency.

Calpine's attempt to create an equivalence between customer-generators eligible for the NEM successor tariff and large merchant gas-fired generation plants is built on the appearance of variants of the word "generation" in both categories. This is not a sufficient basis to demonstrate an actual similarity. The Commission's adoption of the NEM successor tariff, including the netting rules that apply to customer-generators eligible for that tariff, does not support Calpine's request for a rulemaking to change the IOUs' station power tariffs for central station generation facilities.

As a secondary argument for granting the Petition, Calpine urges that modern, efficient central station gas-fired generation facilities in California need more financial support than they are currently getting in the market in order to remain "economically viable." (Petition at 12.) Calpine is essentially asserting that the Commission should change the station power tariffs in order to reduce the costs of doing business for "clean central-station generation," which is the sixth out of six resources in the state's "loading order."⁹

As PG&E properly points out, any policy questions about whether the Commission should increase support for natural gas fueled central station generation, and if so, how, should be addressed in a more direct way that clearly identifies the issues and the costs and benefits of any proposed solutions. (PG&E

⁹ The Energy Action Plan (EAP) Loading Order, originally published by this Commission and the California Energy Commission on May 8, 2003, was endorsed in D.04-12-048 and has been used by the Commission continuously since that time. *See, e.g.*, Res. E-4806 (October 27, 2016) at 5:

The EAP prioritizes resources in a "loading order" of policy preference and directs IOUs to procure resources in the following order of priority: Energy Efficiency and Demand Response, renewable fuel resources, clean fossil-fired Distributed Generation, and clean central-station generation.

Res. E-4806 may be found at:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M169/K114/169114160.PDF>.

Response at 3.) Calpine's Petition for changes to the station power tariffs is not an appropriate vehicle to address this larger issue.

The Commission is engaged in a number of initiatives that affect broad areas of the electric system, including implementation of the various mandates of Senate Bill 350 (De León), Stats. 2015, ch. 547; planning for increased use of distributed energy resources (including the distribution resources planning rulemaking (R.14-08-013) and the integration of distributed energy resources rulemaking (R.14-10-003)¹⁰; and working to meet the new greenhouse gas reduction mandates of SB 32 (Pavley), Stats. 2016, ch. 249. The rulemaking proposed in Calpine's Petition would not support any of these initiatives, but would divert the Commission's resources at a time that focus on these core initiatives is needed. Calpine's Petition should therefore be denied.

3. Comments on Proposed Decision

The proposed decision of Administrative Law Judge Anne E. Simon in this matter was served on the parties in accordance with Public Utilities Code § 311, and comments are allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed by _____, and reply comments were filed by _____.

4. Assignment of Proceeding

Michael Picker is the assigned Commissioner, and Anne E. Simon is the assigned Administrative Law Judge in this proceeding.

¹⁰ See also the Distributed Energy Resources Action Plan, adopted by the Commission November 10, 2016.

Findings of Fact

1. Net energy metering tariffs may be used by eligible customer-generators, as defined by statute and implemented by the Commission.
2. Station power tariffs apply to commercial generation facilities.
3. The Commission most recently considered the netting methodology for station power tariffs in Res. E- E-4673, as modified by D.15-04-031.

Conclusions of Law

1. Public Utilities Code § 1708.5 gives the Commission discretion to grant or deny a petition to adopt, amend, or repeal a regulation that is filed pursuant to that section.
2. For purposes of considering changes to the IOUs' tariffs on station power, central station generation facilities and customer-generators eligible for the NEM successor tariff are not similarly situated.
3. Review of the netting rules for station power tariffs is not the appropriate venue for considering larger questions of the economic viability of natural gas fired central station generation in California.
4. Because the Calpine Petition does not present any issues that are necessary for the Commission to resolve, the Commission should exercise its discretion to deny the Petition.

5. In order to resolve the issue presented by Calpine's Petition expeditiously, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Petition of Calpine Corporation to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code Section 1708.5, filed July 12, 2016, is denied.
2. This order is effective today.
3. Petition 16-07-004 is closed.

Dated _____, at San Francisco, California.